IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CIVIL REVISION APPLICATION No 1438 of 1998
For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HAMIRBHAI JODHABHAI RATHOD

Versus

LEGAL HEIRS OF JAMALBHAI HAJIBHAI

Appearance:
MR YOGESH S LAKHANI for Petitioner Nos. 1-4
MR PJ KANABAR for Respondent No. 1
..... for Respondent No. 1/1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/04/2004

ORAL JUDGEMENT

The petitioners herein are the original defendants of Regular Civil Suit No.156 of 1996, which is pending before the Civil Court at Kodinar. The respondents herein are the original plaintiffs of the said suit. The said suit is filed for a declaration and injunction in connection with some agricultural land. The case of the plaintiffs is that the plaintiffs are in possession and are the owners of the disputed land. In the said suit, the plaintiffs submitted an application at Exhibit 5 for interim injunction under Order 39 of the

Code of Civil Procedure. The trial court rejected the said application at Exhibit 5, against which the plaintiffs preferred an appeal, being Civil Miscellaneous Appeal No.36 of 1997, before the District Court at Amreli. The said appeal was heard by the Assistant Judge, Amreli, who, by the impugned order, allowed the said appeal and granted injunction, as prayed for by the plaintiffs in the suit. It is the aforesaid order which is impugned at the instance of the defendants in this Revision Application.

Considering the nature of the order, it is clear that it is an interlocutory order in a pending suit. The suit is still at large before the trial court. In view of the amendment in Section 115 of the Code of Civil Procedure, therefore, this revision is not maintainable, as the same is filed against an interlocutory order in the suit. This revision application, therefore, is disposed of as not maintainable. Rule is discharged. No order as to costs.

It is clarified that it would be open for the petitioners to file a Special Civil Application under Article 227 of the Constitution of India challenging the impugned order. It is clarified that this Court has not expressed any opinion on the merits of the issue.

1st April, 2004 (P.B. Majmudar, J.)

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(apj)